

„The draft GIIGNL voyage charterparty for LNG shipping and the spot market“



University of Oslo
Faculty of Law

Candidate number: 5014

Supervisor: Arne Thorsen (BW Gas)

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1 Introduction

Liquefied natural gas, or LNG, is natural gas that has been super-cooled to minus 163 degrees Celsius. This process constrains natural gas to condense into a liquid. Natural gas takes up to 600 times less space once forced into a liquid state, which makes it feasible to transport from its deposits to far away markets by ship. LNG is an energy source that has much lower air emissions than other fossil fuels, such as oil or coal and is hence the most environmentally friendly fuel as today. Ship design, construction and operation are subject to high standards, with no LNG cargoes ever been lost or spilled.

After two challenging years when LNG charter rates were plunging because of the surplus of tonnage and the financial crisis the liquefied gas-carriers sector is in transition to see better times. The demand for LNG is now again rising, due to a global economic recovery. While the market for shipowners who have engaged their vessels in long-term agreements looks more optimistic, spot and short-term charter markets will still face another tough year. Worldwide though, the LNG production is expected to increase by 40% in just three years to 280m tonnes per year by the end of 2010. This is due to new export facilities being opened up¹. At the same time the import capacity will redouble in 2015². Such a massive expansion will provide greater demand for LNG carriers.

Traded LNG volumes are expected to increase by 15% in 2010³ as facilities are opened. All this additional global capacity should leave the LNG carrier owners happy ever after. Instead a slump in global gas demand due to the crisis and a fall in gas prices in the USA,

¹ Cf. *LNG & LPG special report*, Future of Shipping - Society
Lloyds list, Thursday 27 May 2010

² According to Norwegian investment bank Arctic Securities.

³ According to analysts at Norway's RS Platou ASA.

partly due to production of shale gas⁴, slow down the recovery of markets, especially the ever limited spot market goes slow.

It is still customary in LNG spot trade to use time charterparties, even though in other shipping segments voyage charterparties would be the solution of choice for such a trade. This phenomenon has several reasons, which will be discussed later. Nevertheless, this situation encouraged the *International Group of Liquefied Natural Gas Importers* (GIIGNL⁵) to act. Their goal was to draft a voyage charterparty, especially designed to serve as the contract of choice in the LNG spot market.

According to Mr. Nicolas Zanen, shipping lawyer at Cheniere Energy Inc. and chairman of the drafting committee, the draft is now revised and commented on by its members. Its final version will then be vetted by a law firm. This process is supposed to make the charterparty as user-friendly as possible and hence more likely to become a major contract in the LNG spot trade. Originally, this thesis was supposed to comprise of the final version of the V/C, but due to its late release date this thesis will be retrained to the current draft version at hand.

This thesis aims to give at first an overview over the technical background sui generis to LNG trade that has to be acknowledged in charterparties. Additionally it will give an outline on the market as today. Therefore, a questionnaire was produced and hand over to players in the LNG market. The responses were applied to draw a picture of the current market. In addition, relevant articles were used. Finally, the new draft will be presented, commented and compared to existing charter solutions in the LNG trade. The overlook will focus on clauses that are special for LNG trade, or those which represent a novelty.

This thesis addresses the reader who already has a certain degree of knowledge regarding shipping law and LNG; i.e. it will not present basic knowledge, given the limitation of space.

⁴ Cf. *Schiefergas ist ein Riesenthema (shalegas a hot topic)*, Wirtschaftsblatt, 20.03.2010, accessible in German at <http://www.wirtschaftsblatt.at/home/412964/index.do>

⁵For more information visit www.giignl.org/

1.1 Legal background charterparties

There are different ways of trading the ship. The utilisation of the vessel in liner or tramp trade is one possibility⁶. The vessel can alternatively also be utilised under a charterparty (C/P).

If the governing contract comprises of a time charter (T/C) or a voyage charter (V/C), the ship remains in the possession of the owner. He crews, insures and maintains the vessel (nautical management); whereas the charterer takes over its commercial management⁷. Another possibility is demise or bareboat charter (leasing), where both nautical and commercial management are transferred to the charterer.

All those contracts can be summarised under the term contract of Affreightment (CoA), as a “contract to perform transportation services by ship or to make a ship’s transportation capacity available⁸”.

Notwithstanding, the two forms, V/C and T/C, of engaging the vessel in the trade comprise of significant differences, especially in the way the owner gets paid.

T/C’s are defined by the promise to have a vessel at disposal for a period of time, say six months. Payment is done by means of hire. Hire is calculated as a daily amount and payable in advance (often payable monthly or semi-monthly⁹). Hire starts to run when the vessel is delivered until it is redelivered. However, this running may be interrupted by off-hire situations which are listed in most T/C’s. Those are mainly external events that prevent the full working of the vessel. The fuel consumption (bunkers) and other costs such as port costs etc. will be paid for separately by the charterer. Hire, as opposed to freight, is subject

⁶ This means that the vessel is operated by the owner and sails regularly between a line of certain ports (liner trade) or from port to port, looking for cargo (tramp trade). In this form of engagement the vessel transports goods or passengers for freight, governed by a bill of lading (B/L) or a waybill.

⁷ I.e. he decides where to go and what to load

⁸ Cf. Bull, Hans Jacob/ Falkanger, Thor/ Brautaset, Lasse: *Scandinavian Maritime Law: the Norwegian perspective*, Oslo 2004, p. 240.

⁹ Cf. Hill, Christopher: *Maritime Law*, 1998 London, p. 179.

to the usual rules of Common Law and equitable set-off. This means it can be offset against counterclaims under the same C/P¹⁰.

Under a V/C the vessel is chartered for a specific voyage for payment of freight. The freight will cover the owners' expenses, including fuel (bunkers) and crew costs. Freight falls normally due when the cargo has arrived in the port of destination. If the freight or demurrage is not paid, the ship-owner has a lien on the cargo¹¹ and on the sub freight due to the charterer from possible sub charterers¹². Setting off of counterclaims under the same C/P is outlawed¹³.

If the agreed time for loading or discharging under a V/C, the so called laytime, which is a part of the agreed freight charge, is exceeded then the charterer is in breach of the charterparty. He will thence have to pay compensation in form of demurrage. The demurrage rate is usually fixed in the charterparty as a certain rate per day. The ship-owner will have to proceed with reasonable dispatch on the contractual voyage¹⁴.

1.2 Factual/ technical background- LNG, its history and shipment

Natural gas is exploited from the same deposits where oil can be found. The gas that can be extracted from those deposits is a mixture of dry and wet gas, and consists of condensable hydrocarbons like propane and butane. This so called rich gas must be processed in a shore based plant to separate the dry from the wet gas. After this procedure the dry gas which then consists of 85% methane can either be transported in pipelines, which is most cost efficient up to a distance of 3000 kilometres¹⁵. This is because the costs of all technical

¹⁰ Baughen, Simon: *Shipping Law*, London 2009, p. 201.

¹¹ Also stipulated in the draft, cf. clause 12 GIIGNLVOY draft 1 – 2009.

¹² Cf. Baughen, Simon: *Shipping Law*, London 2009, p. 200.

¹³ Cf. *The Brede* [1973] 2 Lloyd's Rep. 333 and *The Aries* [1977] 1 Lloyd's Rep. 334.

¹⁴ Cf. Baughen, Simon: *Shipping Law*, London 2009, p. 200.

¹⁵ Cf. *Die schwimmende Pipeline (the swimming pipeline)*, Zeit Online 3.2.2009, accessible in German at <http://www.zeit.de/2009/04/T-Erdgastanker>

requirements to liquefy the gas transport it on a cost extensive vessel, and the costs of regasification amortise after this distance.

At the port or place of destination the LNG has to be regasified again in shore based facilities to be then streamed into the local network. As today, 15 of those plants are at work in the EU, but more are to be built in the near future. Due to political conflicts (transit pipelines through Ukraine and Belarus just lately) the sustenance with gas from Russia to Western Europe is facing some bottle necks once every now and then. This is yet another reason why among others the German Government as one of the biggest importers is in favour of LNG supply, rather than pipeline supply. Politicians around noticed that the use of LNG is a proven, reliable and safe process.

RWE, one of Germanys biggest energy supply company, has recently started to built yet another huge regasification facility in Rotterdam (Gas Access to Europe, “Gate”) to secure a stable supply with LNG for Western Europe¹⁶. But where shall this stable supply come from? Let us now take a look at where in the world the gas can be found, and how much gas is left to be exploited.

More than 65% of all natural gas resources can be found in the Middle East, where Qatar has 28% and Iran 25% of the global resources. Other major gas deposits can be found in Russia (5%), Nigeria (5%), Algeria (4%) and Australia (5%). In Europe the main exporters are Norway¹⁷, the U.K. and The Netherlands. As opposed to this are Germany, USA and Japan the major importers. At the end of the year 2005 global gas reserves totalled 173 trillion cubic meters¹⁸. Just slightly less than proven petroleum reserves. Proven natural

¹⁶ Cf. *Die schwimmende Pipeline (the swimming pipeline)*, Zeit Online 3.2.2009, accessible in German at <http://www.zeit.de/2009/04/T-Erdgastanker>

¹⁷ Norwegian gas exports supply approximately 16 % of the European gas consumption. Most Norwegian exports go to Germany, the UK, Belgium and France, where Norwegian gas accounts for 25 % to 35 % of the total consumption. Current capacity in the Norwegian pipeline system is about 120 billion scm per year. There are four receiving terminals for Norwegian gas on the Continent: two in Germany, one in Belgium and one in France. There are also two terminals in the UK. Cf. *Facts 2009 - The Norwegian petroleum sector*, The Ministry of Petroleum and Energy together with the Norwegian Petroleum Directorate, accessible at <http://www.npd.no/en/Publications/Facts/Facts-2009/>

¹⁸ Which equals 61.08343 trillion tonnes, the measurement unit used elsewhere.

gas resources are believed to last 70 years at today's production levels, whereas proven oil reserves are believed to last 40 years at current production levels¹⁹. There are vast reserves of natural gas in the world without access to local markets, largely because LNG has not been price competitive with domestic natural gas. Cambridge Energy Research Associates predicts that the global LNG market will triple in size and play a more important role in world energy supplies over the next 20 years. This author will now take a closer look at the history of LNG.

During the enormous industrial development after the World War II, natural gas resources were recognised to be a serious energy source. It was discovered that most oil fields also contain vast deposits of natural gas. In some areas the relevant customers of this gas were nearby, and so the gas could easily be transported via pipelines. But to reach far away markets the gas had to be carried by sea. Petroleum products were already in the 1860s transported by ship, but it took a century until natural gas would be transported by sea²⁰. The reason for this is on one hand the rapid evolvement of the oil industry in comparison to gas, and on the other hand the challenging technical solutions. After sophisticated solutions for the LNG carriage were found, the first LNG voyage was performed on the "Methane Pioneer" in 1959 from the USA to England. This voyage demonstrated that large quantities of LNG could actually be transported over long distances by sea in a safe and profitable way. The LNG vessels were at that time extremely expensive, between USD 70 and 80 million. This extreme price and its highly sophistication made large LNG carriers not the typical vessel for speculative operations in the spot market. If there ever had been an investment that needed to be secured through long term shipment contracts, this was it.

Britain then in 1961 signed a 15-year contract to take about 1 million tonnes per annum (mtpa) from Algeria, starting in 1965. The following year the French signed a similar deal

¹⁹ Cf. Tusiani, Michael D./ Shearer, Gordon: *LNG a nontechnical guide*, Tulsa (Oklahoma) 2007, p.10.

²⁰ Cf. Tusiani, Michael D./ Shearer, Gordon: *LNG a nontechnical guide*, Tulsa (Oklahoma) 2007, p.13.

to buy LNG from Algeria. This made Algeria the first country in the world to own a Liquefaction plant, to export its gas from its deposits in the Sahara to Europe²¹²².

In 1969 the Kenai plant in Alaska (with today's capacity of 1.3 mtpa) began to deliver LNG to Japan's Tokyo Gas and Tokyo Electric Power Company. In 1972, Brunei became Asia's first producer with its LNG plant at Lumut (today's capacity of 6.5 mtpa) and supplies Korea and Japan. In 1970 Spain and Italy began to import LNG from Libya's plant at Marsa el Brega. U.S. imports from Algeria started in 1972.

In the year of 1979 the LNG market witnessed the first LNG contract expiration: the 15-year contract between Algeria and the UK ran out. Into the 1980s delivery was upheld, but was then finally stopped. Notwithstanding, the entering of Malaysia into the LNG market in 1983 (7.5 mtpa), and Australia in 1989 (7.5 mtpa) documented the rise for natural gas demand in Asia.

In the Middle East, Qatar became the second LNG producer in January 1997 with its Qatargas LNG plant. Countries who lately became LNG exporters are Trinidad in April 1999 (3 mtpa), Nigeria in October 1999 (5.6 mtpa) and Oman in April 2000 (6.6 mtpa) who delivered its first cargo to Korea²³. Countries to join the club of LNG exporters in the near future are Peru²⁴ and on an even bigger scale than before, Australia²⁵.

The fleet of LNG carriers on the other hand had a boom time in the early 1970s with all time high charter rates. But the market eventually overheated and got hit by the shipping depression. After the collapse some new buildings never sailed one single voyage. They went right from the shipyard to the scrap yard, so to say. The rebuilt of the fleet started in

²¹ Cf. Kolltveit, Bård: *The Golar Chronicle*, Oslo 1991, p. 137-149.

²² Cf. Wooler, R.G.: *Marine Transportation of LNG and Related Products*, Cambridge 1975, p. 1-75.

²³ Figures taken from the SEMPRA LNG website, accessible at <http://www.sempralng.com/pages/About/History.htm>

²⁴ Cf. *Peru to join LNG exporters' club with opening of production plant*, Lloyds List, 27.05. 2010

²⁵ Cf. *Australian export drive opens doors*, Lloyds List, 27.05.2010.

the 1990s. The global fleet of LNG carriers today consists of a 346 vessels²⁶. It is predicted that the global fleet will increase by 4% over the next two years. At least 130 vessels of the 346 global fleet are controlled by energy companies and another 140 are in the hands of the major owners²⁷. About 327 ships are big enough to operate in the main LNG market, the rest are too small and thus they serve niche markets, e.g. in Norway.

The operation of a LNG gas carrier is quite unique in many aspects; this has to do with the unparalleled characteristics of LNG. The carriers are specially designed tankers with double hulls and other distinctive safety features. The double hulls are needed to provide structural rigidity. Normally the tanks in e.g. oil tankers provide this stability, but these tanks do not exist in LNG vessels. Also, the double hulls need to carry the huge amounts of ballast water, since the cargo is so light²⁸. LNG weighs less than one-half the weight of water. LNG is odourless, colourless, non-corrosive and non-toxic. Its weight is

To fit as much gas into the tanks of the vessel the gas will therefore be cooled down to minus 163 °C. This process of super-cooling the gas allows the cargo to “shrink” its volume by 1:600 parts and the liquid is then called LNG (liquefied natural gas). It is worth mentioning that no pressure is applied, and that the LNG can be transported under normal atmospheric pressure. An important role in the carriage of LNG falls thus not only on the shore based liquefaction plants, but also on the tank system onboard the vessel. The tank system needs to be quite sophisticated since conventional LNG tankers do not have cooling plants²⁹. The most common tank systems today are the self supporting “Moss tanker” (with its characteristic spherical tanks which shows halfway aloft) type, and the “Membrane Type” (with its prismatic shaped tanks showing aloft).

²⁶ Cf. *Global recovery lifts LNG demand*, Lloyds list, 27.05.2010.

²⁷ Cf. *Legal and Economic Analysis of Tramp Maritime Services, ANNEX 5 Major Owners and their Fleets*, EU Competition Report, accessible at http://ec.europa.eu/competition/sectors/transport/reports/tramp_annex5.pdf

²⁸ Cf. Tusiani, Michael D./ Shearer, Gordon: *LNG- a nontechnical guide*, Tulsa (Oklahoma) 2007, p. 73.

²⁹ This means that if the LNG warms up during the voyage (due to sloshing or other external influences) the so produced “boil off” (regasified LNG that needs to be extracted from the tanks) can either be used to steam the vessel or needs to be emitted in the atmosphere, since it cannot be cooled down again without a cooling plant.

There are all together 4 patents. They differ in the amount they can be loaded up to (minimum and maximum), the amount of boil-off that is produced during the voyage due to sloshing³⁰, and how robust they are. In all those categories the Moss system is at first sight the better solution, but still there is a trend towards the use of the membrane types instead of the self supporting Moss-systems. This is possibly because prismatic membrane tanks employ the hull shape more efficiently and thus have less empty space between the cargo-tanks and ballast tanks. As a result of this, Moss-type design compared to a membrane design of equal capacity will be way more expensive to transit the Suez Canal, because they can load more LNG in proportion to their size. The canal dues depend on the gross tonnage; membrane vessels can load more cargo per gross tonnage, and hence they are more economical regarding canal fees (smaller gross tonnage per cargo unit). Additionally, membrane tanks provide for lower fuel consumption. By 2006, the LNG fleet in use consisted of 45% Moss tanks and 51% membrane type storage systems³¹. This will change in the near future, since 80% of all ships on order are to employ membrane tanks³².

However, self-supporting tanks will possibly be considered in the future for offshore storage where bad weather (as aforementioned are they more robust and sloshing resistant) will be a significant factor³³.

But why doesn't the LNG need cooling during the voyage to maintain its liquid form? In its liquid form, gas possesses an unusual ability, called auto-refrigeration³⁴. Continuous evaporation draws heat from the liquid and hence it does not require cooling, rather than just isolation to maintain the gas in a liquid form. The evaporated gas though needs to be extracted from the tanks (so called boil-off).

³⁰ Due to motion of the vessel the LNG will toss and turn in the tanks. Thereby it has more contact with the tank surface which will produce a higher boil-off.

³¹ The remaining 4 % are apportioned on the other 2 patents.

³² Cf. Tusiani, Michael D./ Shearer, Gordon: *LNG a nontechnical guide*, Tulsa (Oklahoma) 2007, p. 142.

³³ Cf. *Massive LNG vessels may use two tanks*, Lloyds list 27.05.2010.

³⁴ Cf. Tusiani, Michael D./ Shearer, Gordon: *LNG a nontechnical guide*, Tulsa (Oklahoma) 2007, p.13.

But this is not the only operation that a LNG carrier needs to fulfil and what makes the transportation so special. When the vessel arrives at the port of loading she may have to be “pre-cooled to allow loading to commence upon berthing”³⁵, meaning that her tanks and all connection pipes must be cooled down slowly, as too fast cooling could cause the tanks to crack over a lifespan of several decades. This is achieved by “spray cooling” them. The process comprises of a small pump spraying LNG into the tanks and thereby cooling them gently down. During this procedure boil-off is generated, which has to be pumped out of the tanks and which can be used as fuel to steam the engines (if they are compatible); alternatively it can be pumped ashore.

It is quite customary to already cool down some of the tanks during a ballast voyage to the port of loading, using the so called “heel” (some LNG that has been left on board for this operation) and then just cool down the remaining tanks while the already cold tanks are loaded at the same time.

Additionally, all oxygen must be removed from the tanks as it can cause the tanks to explode if not removed. This is done by a measure using nitrogen to purge the unwished gas out of the tanks. At the port of discharge the tank is cold already (it is laden with LNG) and hence just the pipelines, connections and flanges must be cooled down and checked gas tight. Also, any oxygen must be removed with the use of nitrogen. After all this, the cargo can be discharged.

The temperature in the tanks is crucial with regards to the boil-off rate of the cargo. Regardless of the cargo system on today’s ships the boil-off rate lies around 0,1% - 0,25% of the cargo per day depending on the efficiency of tank system and the roughness of the voyage³⁶. Since conventional LNG carriers do not have a reliquefaction plant, to reliquefy the gas back into LNG, the vaporised gas can be used to steam the vessel. As aforementioned the owner (who has to pay for bunkers in a V/C) can save money by using

³⁵ Cf. GIIGNL LNGVOY DRAFT 1 – 2009, clause E.1.(a).

³⁶ Cf. Tusiani, Michael D./ Shearer, Gordon: *LNG a nontechnical guide*, Tulsa (Oklahoma) 2007, p.73.

the energy contained in the boil-off. Since the boil-off is part of the cargo, the cargo owner/ the charterer will sometimes be compensated for this³⁷. If the boil-off cannot be used (because of contractual or technical reasons), the overpressure needs to be released from the tanks. This gas can either be burned in the “thermal oxidiser” or just vented into the atmosphere. The latter is the less environmental friendly method.

If the gas price is much lower than the fuel price an installation called “forced vaporiser” can be used to generate additional gas from the cargo for propulsion. When the vessel is on its way to the next port of call in a ballast condition it normally has some LNG left in its tanks from the last voyage. The amount of this so called “heel” needs to be calculated correctly according to the ballast voyage because some LNG will vaporise as boil-off. The “heel” is crucial to cool down the tanks during the voyage (at least before arrival) so that the vessel can arrive with her tanks “pre-cooled to allow loading to commence upon berthing³⁸” (for this process spray cooling is used, see above)³⁹, to bet for a spot cargo as soon as possible⁴⁰.

1.3 The market today

There is a spot market for the sale of LNG, and a spot market for the chartering of LNG carriers. Even though they are closely connected⁴¹ it does not mean that the chartering spot market will grow accordingly. Not all spot cargo will end up on the spot charter market for ships. Whenever this thesis refers to the size of the spot market it is meant the LNG sales market, if not expressly mentioned differently. All rates referred to are those of May 2010, if not mentioned otherwise.

³⁷ Normally only boil-off exceeding the guaranteed boil-off rate will be charged for.

³⁸ Cf. GIIGNL LNGVOY DRAFT 1 – 2009, clause E.1.(a).

³⁹ Cf. Wooler, R.G.: *Marine Transportation of LNG and Related Products*, Cambridge 1975, p. 1-75.

⁴⁰ Prompt cargoes are sometimes being chased by as many as 15 different ships.

⁴¹ I.e. The spot market for the chartering of vessels will grow if the spot market for selling of LNG will grow.

85% of the LNG in the market is sold under long-term gas supply contracts (20 to 25 years) between LNG plants (producers) and the terminals (importers), transported by vessel on rates that are on average around \$70.000 per day for the life of the contract. Accordingly, about 15% of LNG is traded on the spot market. LNG carriers working the spot market for just one voyage are receiving rates of \$ 22.000 to \$ 25.000 per day for a voyage⁴². In contrast shipowners who speculatively ordered and built LNG carriers at prices of around \$ 240 million were earning up to \$ 100.000 per day on the spot market just four years ago⁴³; the daily rate for a time charter of 9 to 12 months is now at \$ 32.000 to \$ 35.000⁴⁴.

The breakeven costs (financing plus operational costs) for these expensive ships (a Q-Max vessel costs \$ 300 million each) are estimated to be something around \$ 80.000 per day for a vessel with LNG capacity of 266,000 cubic metres. This compares poorly with the current rates,

It is estimated that short-term time charter rates would average \$40,000 per day this year, from \$34,000 per day last year and would reach \$55,000 per day in 2012⁴⁵.

Additionally it has been forecasted that by the year 2015 around 22% of the LNG will be traded in the spot market⁴⁶. Some believe it will have a share of 30 – 40 % of the sold LNG capacity by 2020⁴⁷, which would be an impressive jump from around 6% in 2000 and 13% in 2006. The utilisation rate of the fleet of LNG carrier is supposed to jump to 85% from 59% last year as an expanded global fleet is employed on the five additional export

⁴² The spot LNG carrier rates are the same as average time charter rates for panamax and supramax bulk carriers — which are far less sophisticated and hence cheaper (both in building and operation) ships.

⁴³ Cf. *LNG spot market rates linger at rock-bottom*, Lloyd's List, 22.06.2010.

⁴⁴ Cf. *LNG spot market rates linger at rock-bottom*, Lloyd's List, 22.06.2010.

⁴⁵ Cf RS Platou ASA (Norway) forecast, accessible at http://www.platou.com/dnn_site/LinkClick.aspx?fileticket=uZ1BbLCRHFQ%3d&tabid=310

⁴⁶ Cf. Arctic Securities ASA Norway forecast.

⁴⁷ Richard Beyer, general counsel for NYK LNG Atlantic, a Japanese shipowner that has a stake in 65 LNG gas carriers and manages a further 37 vessels, cf. *LNG spot market rates linger at rock-bottom*, Lloyd's List, 22.06.2010.

projects. But still, this utilisation rate and the consequential short term rates do not justify an investment in new ships at the moment⁴⁸.

The vast majority of the new LNG production capacity is coming from major projects in Qatar (new plants and trains) over the next two years⁴⁹, but new LNG supplies will also be coming from projects in Australia⁵⁰ and Africa into 2012⁵¹.

It is worth mentioning that there are no global benchmark prices for natural gas, nor price indexes for C/P's in LNG trade, like in other trades (e.g. Baltic Exchange Dry Index, BDI)

1.4 Spot market

The definition of the term spot market includes the term spot and short term LNG market. These are basically flexible cargoes that do not have a fixed destination, and cargo under contract of less than 3-4 years.

But what are these flexible cargoes, and where do they come from? Spot and short-term LNG cargoes consist of excess cargoes from long term contractual commitments that is produced and then sold to a third party; cargoes that are redirected from a scheduled delivery and rerouted to a market where it has a higher value (i.e. the gas price is higher), or even swap of cargoes in order to save on shipping distance and therefore on transportation cost. Also so called "wedge volumes" are subject to spot trade. They consist of volumes that have been produced, but where the buyer has not yet reached the plateau of the contractual off-takes. This is due to a build up period in the contract to establish a

⁴⁸ Cf RS Platou ASA (Norway) forecast, accessible at http://www.platou.com/dnn_site/LinkClick.aspx?fileticket=uZ1BbLCRHFQ%3d&tabid=310

⁴⁹ Cf. *Global recovery lifts LNG demand*, Lloyd's list 27.05.2010.

⁵⁰ Cf. *Australian export drive opens doors*, Lloyd's List, 27.05. 2010.

⁵¹ Cf. *Global recovery lifts LNG demand*, Lloyd's list 27.05.2010.

market demand, or a buffer that had been implemented in the event the project delays⁵². Other cargoes may consist of LNG that has been produced after the expiration of long-term contracts, buyers' over-commitment⁵³, overdesign of liquefaction trains⁵⁴, buyers that exercise volume-flexibility rights under long-term contracts⁵⁵, or contract failures⁵⁶.

This thesis will now take a closer look at the market where these spot cargoes are sold. A spot market for the sale of LNG exists, but it does not function as a healthy market should where risk and reward is related (i.e. taken into account the daily operational costs, the current daily rates and the breakeven). Some claim⁵⁷ that most shipowners having their vessels in the spot market today are there because they have failed to secure attractive long-term employment for their vessels, and maintaining their vessels in the spot market cannot be sustainable over a longer period of time, as the financial rewards are not there – at least not today. “The spot market has not performed well and is in dire straits after a positive winter”⁵⁸. There are many vessels lying idle by now; the inconsistent employment record of LNG carriers emphasises the subpar short-term developments for this sector of shipping, “If I were a shipowner today, I would be very concerned”⁵⁹, one shipbroker said in Lloyd's List. With high capital costs, those LNG carriers engaged in the spot market with today's rates have unquestionably one of the worst returns in the entire maritime sector. Let us now take a look on the development of this spot market in the near future.

With the addition of new routes to reach for fresh markets in addition to the extra shipping capacity that will be added, the size of the spot market is predicted to increase over the next

⁵² Cf. Tusiani, Michael D./ Shearer, Gordon: *LNG a nontechnical guide*, Tulsa (Oklahoma) 2007, p. 215.

⁵³ Long-term supply demand is hard to estimate, thus some buyers overcontract. If a buyer then has excess supply this LNG will end up on the spot market.

⁵⁴ To grant reliability in contractual guaranteed volumes.

⁵⁵ Even though these contractual flexibilities may be limited to 5% or less, they still produce a source for spot volumes.

⁵⁶ E.g. India's Dabhol project, early termination of the sales agreement due to disputes regarding pricing.

⁵⁷ Cf. *The Questionnaire*, to remain anonymous.

⁵⁸ Cf. Gibson, director of Gas Charles Popham, in Lloyds List, 27.05. 2010.

⁵⁹ said Debbie Turner, director of BS Energy Services, a division of London-based shipbroker Braemar, about the state of the spot market, cf. *LNG spot market rates linger at rock-bottom*, Lloyd's List, 22.06.2010.

10 years. The greatest growth in LNG imports in this decade is expected to be in China⁶⁰ and India; also nations in South America and Asia are to join the club of LNG importers⁶¹. In the following this author will present pro and cons for the spot market for the sale of LNG to expand.

1.5 What could allow the LNG spot market to grow?

Excess shipping capacity will be available. This will make it easier to ship cargoes to best value market or to transport excess cargoes. The excess in tonnage is due to delay in projects and to shorter trade routes due to change in LNG market⁶². After a two-year standstill in new LNG carrier orders, the industry is finally getting back to ordering new carriers from Asian shipyards, although it is nothing like the spending spree of 2004-2008. So far this year three LNG carriers have been ordered, compared with none last year and in the second half of 2008⁶³. More vessels in the market would normally mean that the rates are plunging, but by 2012 or 2013 it is believed that there might not be enough vessels to transport the excess LNG capacity for the projects planned; although it is too early to forecast whether these new quantities will be transported by the projects own ships or whether they will end up on the spot sale market for LNG and hence transported by independent owners. If the gaps are to be filled by independent owners, the daily rates could increase significantly due to the change in balance in supply and demand in available LNG tonnage⁶⁴.

⁶⁰ "Chinese spot cargo buying will pick up again in the next couple of months. Last year, PetroChina bought at least 10 spot cargoes," a broker with London-based SSY said, cf. *RasGas charters LNG carriers*, Lloyd's List, 9.06.2010.

⁶¹ Cf. *Global recovery lifts LNG demand*, Lloyd's list Thursday 27 May 2010.

⁶² e.g. trades initially planned from Middle East to US, but the higher market value for example in Europe shortened the route and made thus extra capacity available.

⁶³ Cf. *LNG orderbook shows signs of recovery after two-year lull*, Lloyd's List, 27.05.2010.

⁶⁴ Cf. *LNG spot market rates linger at rock-bottom*, Lloyd's List, 22.06.2010.

Excess regasification capacity will be online in Europe and USA. This will boost the LNG market generally. Additionally, an interesting trend can be evidenced as a regasification vessel is build and operated by Exmar off the Jamaica coast from 2012. It is designed to load LNG cargoes from other carriers, store the LNG, and regasify and pump the gas into the local gas network. Similar projects in Brazil and in the Middle East involve regasification vessels that have been reconstructed from trading LNG⁶⁵. This could make the market as to where transport LNG more flexible, given that the gas price in the region in question is sufficiently high. The demand for LNG regasification ships is believed to rise rapidly over the next five years as governments turn to the spot market for gas imports as a temporary solution to meet bottleneck situations which are due to higher domestic demand or seasonal shortcuts. These Ships that can store and regasify the LNG provide the best solution for nations that need to import LNG on short term notice but do not want to build a costly terminal onshore⁶⁶, and thereby creating cargo available for the spot market.

Increase of LNG supply volume. LNG liquefaction projects increase supply up to 30 % in 2010⁶⁷. There are plenty of countries and new plants that will be online in the near future. Peru is the first South American country to join the list of LNG-exporting nations in 2010 when a new production plant is opened on the Pacific coast south of the capital Lima, with the capacity for up to five LNG carriers⁶⁸. Additionally, Australia is set to become the world's second-largest LNG exporter over the next decade. Energy companies are planning to build export hubs on the east and west coasts, with that said creating new shipping routes for LNG carriers⁶⁹. As mentioned will new shipping routes/ projects create spot cargo⁷⁰.

⁶⁵ Cf. *Exmar to own and operate regasification ship*, Lloyd's List, 16.06.2010.

⁶⁶ Cf. *Regasification ships sought after*, Lloyd's List, 27.05.2010.

⁶⁷ Cf. *The Questionnaire*.

⁶⁸ Cf. *Peru to join LNG exporters' club with opening of production plant*, Lloyd's List, 27.05.2010.

⁶⁹ Cf. *Australian export drive opens doors*, Lloyd's List, 27.05.2010.

⁷⁰ This is because of all aforementioned reasons, see 1.4.2.

There is LNG production capacity that has, or will be built and which has not yet been sold under long term contracts. The thinking at many LNG producers today is to retain some extra unsold capacity to be able to take advantage of pricing opportunities that come up for LNG spot sales. On the other hand the LNG buyers are seeking some flexibility so they do not commit to their full intake requirements. This is partly because these intake requirements are not always easy to predict. Additionally these buyers believe it is advantageous from a pricing point of view to source some LNG from the spot market⁷¹.

1.6 What could hinder growth?

The compatibility of LNG carriers and LNG terminals could be a problem that hinders growth. Some ships simply cannot use some ports/ facilities, because of their size or their equipment. But it is said that ship- shore compatibility is a minor issue. It takes a bit time to analyse the ship- shore compatibility and to adjust, so this could prevent a trade to be concluded if it cannot be done sufficiently quick⁷². Qatari tonnage can be a bottleneck though, since it is not very flexible⁷³. Their Q-flex vessel type, a membrane type liquefied natural gas carrier with capacity from 210.000 cbm to 216.000 cbm and their Q-max⁷⁴ with a capacity of 266.000 cbm are LNG carriers of an enormous size. Their length, breadth and their draught are considerable. As of today there is a limited count of terminals that are built for vessels like the Qatari Q-flex and Q-max, which makes the list of possible ports of discharge rather short. This can be evidenced by the fact that Qatari LNG producer RasGas has chartered four conventional-sized LNG carriers to ship LNG to customers in Taiwan and China, despite having six idle Q-Flex ships at hand. These ships were chartered because the Q-Flex ships are unable to unload spot LNG cargoes at ports in question in these countries, solely due to their size⁷⁵. Nevertheless, with some limitations to the size

⁷¹ Cf. *The Questionnaire*, Richard Gilmore, Maran Gas Maritime Inc.

⁷² Cf. *The Questionnaire*, Nicolas Zanen, Cheniere Energy.

⁷³ Cf. *The Questionnaire*.

⁷⁴ The Q-Max gas carriers cost around \$ 300m each.

⁷⁵ Cf. *RasGas charts more LNG carriers despite idle vessels*, Lloyd's List 19.07.2010.

should most modern membrane vessels be compatible with most terminals. SIGITTO⁷⁶ provides a good forum for establishing uniform cargo manifold layouts, piping sizes and basic mooring arrangements which help to accommodate with given variations.

Technical problems with new plants/ trains. The production of the Qatar LNG project Rasgas III, train 6 has been postponed from 2009 to 2010⁷⁷. Also other LNG projects are facing technical problems, e.g. at Statoil's Snøhvit LNG plant in Norway⁷⁸.

Too low rates could hinder financing. The rates are not high enough at the moment to justify the risk, nor are they high enough to create sustainable revenues. This makes it very hard if not impossible to finance modern vessels due to lack of security for vessels that are solely intended for spot trade use. This could preserve the LNG shipping spot market relatively thin compared to other shipping markets.

The industries' inability to adapt to changes in demand. About 2 years ago, some LNG industry consultants were predicting an LNG sellers market with LNG supplies and tight shipping for several years ahead, through 2015 and beyond⁷⁹. Now we are in the opposite environment due to the global recession and decreasing demand. On the other hand, on the supply side, we see a constant increase, partly due to the coincidental completion of some large LNG projects that have been under construction for a couple of years. This fast changing interaction of demand and supply leaves the LNG spot market with yet another problem: The industry is still quite capital and equipment/facility intensive, and this is probably not going to change in the future. Consequentially it is not able to adjust easily to changes in demand – up or down.

⁷⁶ The Society of Gas Terminal and Tanker Owners, accessible at <http://sigtto.re-invent.net/DNN/>

⁷⁷ Cf. *GAS REPORT 5. 2009*, Lorentzen & Stemoco AS (Norway), accessible at <http://www.lorstem.com/Global/Gas%20Reports/Gas%20report%205.pdf>

⁷⁸ Cf. *Statoil: Norway Snoehvit Field Gas Shipments Resume*, Dow Jones Deutschland, 05.01.2010, accessible at <http://www.dowjones.de/site/2010/01/statoil-norway-snoehvit-field-gas-shipments-resume.html>

⁷⁹ Cf. *The Questionnaire*, Richard Gilmore, Maran Gas Maritime Inc.

Too little demand for energy. The consumption of energy in developed countries fell by 1,1% last year. This represents the first annual decline since 1982. This is due to the global economic recession following the credit-crunch. However, there are still some areas in the world where consumption is increasing. Energy usage jumped up an amazing 8,7% in China last year. Asia and the Middle East were the only areas that actually recorded growth. Both oil and natural gas consumption fell globally in 2009. LNG output on the other hand grew as new production came on-stream. Overall prices for all forms of traded energy also fell, especially natural gas, with spot prices falling through 2009. Gas production saw its first ever fall, by 2.1%, with a big 12.1% drop in Russia. This is because cheaper LNG extended its market share in Europe⁸⁰. Japan remained by far the largest LNG consumer, but its imports fell by nearly 7%, while South Korean LNG imports dropped by about 6%. In a global context though, LNG imports increased by 7%⁸¹.

2. Introduction to the new GIIGNL draft

The transport of spot cargo LNG today is to a large extent performed under T/C's, even where it is just one voyage. This is a rare fact in the shipping business, which makes the trade more complicated. T/C's are more sophisticated and considerably larger than V/C's and their negotiation more tedious. In addition they are tailor-made for long time commitments. They address problems unique to time charter, rather than voyage charter. One example is off-hire, rather than demurrage. Additionally all bunkers need to be bought from the owner at delivery, and rebought at redelivery, which just adds to the hassle. In use are T/C's such as ShellTime 4, or ShellLNGTime 1, rearranged to serve as a spot trade contract. The GIIGNL and its members wanted to give the trade a convenient tool to change this fact. GIIGNL's members are mostly oil or gas majors, who will need a V/C for LNG trade mainly for two reasons: Either to charter their own project vessels out on the spot market, e.g. in times where there is a production problem. On the other hand will the

⁸⁰ This could be an advantage for the LNG spotmarket, since it is cheaper the pipeline gas from Russia. On the other hand may also the production of shale gas compete with LNG.

⁸¹ Figures taken from: *Energy usage in developed countries falls 5%*, Lloyd's List, 17.6.2010.

majors want to charter in tonnage in case there is overproduction that is to be sold on the spot market and where their own project vessels cannot transport these cargoes.

In order to make these actions as legally smooth as possible the GIIGNL saw the need to act.

The draft will be presented systematically; whereas clauses that are similar to most major C/P's and which don't bare any novelty or speciality to LNG trade are to be left out, this thesis will try to go more thoroughly into clauses that are unique to LNG trade, or which represent a novelty to what is customary to shipment of LNG. Also clauses that are not special to LNG but which bare potential conflicts within LNG shipping will be examined more closely.

The version that formed the basis for the following analysis was the first draft of the "LNG Carrier Voyage Charterparty", abbreviated to GIIGNL LNGVOY DRAFT 1 – 2009. The draft is divided into the Preamble, Part I (clauses A to M), Part II (sections 1. to 17.) and the Appendix A.

All clauses referred to, if not mentioned otherwise are meant to be clauses of part I and II of the draft and can be found in the annex to this thesis. We will in the following take a look at the different clauses, compare with existing C/P's in use, as well as comment on these clauses. It comes natural that only some clauses are suitable for such a discussion, because the concept of for example demurrage is not existing in T/C's, and vice versa are off-hire clauses non existing in V/C's⁸².

⁸² Demurrage is simply not an issue in a T/C because if the vessel is hired out for a specific time, the owner does not care what the charterer does with the vessel; i.e. whether it is lying alongside the quay or whether she is performing a voyage. He will be compensated by way of hire either way. On the other hand is the charterer not concerned with off-hire under a V/C, because he will only pay freight for one voyage anyway. Whether the vessel was out of service does not concern him if she will only arrive at the port of destination (subject to delay liability).

The comparison of clauses will mainly focus on a T/C that one major LNG owner was kindly to provide for (abbreviated TC), GasVoy 2005, ShellVoy 6, ShellTime 4 and ShellLNGTime 1. Additionally some other C/P's will be used for some special topics.

2.1 Loading, discharging ports and cargo

Narrowing down the list of trading ports can be crucial as port charges vary widely between different load and discharge ports. Additionally the question of compatibility of the vessel on the one side, and the terminal on the other side is of fundamental importance, especially within LNG trade. In the oil trade most vessels can load or discharge in most ports, limited to their size. However, LNG and its transportation needs more sophisticated ports regarding discharging equipments. This adds an extra importance to the list of possible loading/ discharging ports and makes it a very special LNG problem.

Clause B concerns optional loading and discharging ports. It shall list one port, or a list of possible ports where the vessel shall be delivered into the laycan (clause B), and one port or optional ports for discharge (clause C). There is also provided for an unloading window, the consequences for missing the time window are left blank though.

The draft, being standard and in line with major C/P's, however does not state that the port must be one *safe*⁸³ port, as many other C/P's do. This has been criticised by GIIGNL members. One could actually argue that the given port must be safe anyway, since it is said in clause 5 that she will have to load at a safe berth, and that such berth must be reached in a safe way. But adding the word safe to this clause would make it easier and more foreseeable.

⁸³ A *safe port* is a term in a C/P that stipulates that the responsibility on the cargo interest to order the vessel only to a port which is physically and politically safe to arrive, remain and to leave. The sort of the cargo to be loaded or discharged shall be taken into consideration.

It is also proposed by a GIIGNL member that a list of compatible ports should be incorporated in the clause, and in case the vessel is rejected at a port listed, then charterers should have the right to cancel. But it is somewhat difficult to cancel a V/C while the cargo is still on board.

Both point raised, that the port must be safe, and that it has to be compatible with the vessel, are not mentioned in the draft. This is a shortcoming that inflicts problems especially to LNG trade and should be addressed in the final version, i.e. the owner may accept any port as safe, and warrants compatibility.

Clause D requires the cargo to be LNG. It gives the alternative to either complement natural boil-off with forced boil-off to steam at the required service speed, or not to do so (i.e. burn regular bunkers). Forced boil-off can be used to steam the engine, but is just advisable for charterers (who pays for bunkers under a V/C) if the price for LNG is lower than the price of bunkers⁸⁴.

2.2 Tank condition upon arrival/ after discharging operations

Clause E of the draft deals with the tank condition prior to loading (E.1., i.e. the temperature) and after unloading (E.2., i.e. the amount of heel to be left intentionally in the tanks for cold maintenance).

This is a very special clause, sui generis to LNG and LPG trade. Containment systems on crude oil tankers do not need to be cooled down. Clause E.1 renders two alternatives for the tank condition upon the ships arrival. If the parties agree on alternative (a) the vessel shall arrive pre-cooled so that loading can commence upon berthing. The vessel shall maintain such a condition until the end of the estimated loading window. If the vessel fails to arrive or to maintain her tanks in a cool condition, the charterer shall provide LNG to

⁸⁴ See above.

cool down, which is however for owners account. The second alternative (b) regarding the temperature of the tanks prior to arrival of the vessel is that the vessel arrives “warm”. If this alternative is chosen by the parties the charterer shall provide and pay for any LNG needed to cool down the tanks, but the time needed to do so shall be for owners account.

Additionally, clause E.2 renders two alternatives regarding the amount of heel⁸⁵ that shall be left in the tanks after completion of discharging operations. Is the first alternative agreed then the vessel shall intentionally retain an indicated amount of heel for cold maintenance. Alternatively, the parties can agree upon that the vessel shall not retain any heel.

Most charterers probably want the vessel to arrive with cold tanks; hence alternative (a) would be their choice. But this preference of choice could be a problem; while it is kind of simple under a T/C to estimate how much heel is needed for cooling down the tanks until the next voyage starts it can be tricky to do so under a V/C. Normally, under a T/C the next port of call and the next voyage is known. Under a V/C though the vessel has to bet for a spot cargo, not knowing when and where that is. Additionally it will be a new charterer, who might want the vessel in a cold condition, or may want it warm. Hence, it is complicated to calculate how much heel will be needed, and if heel is needed at all. This is a very special LNG topic, which is for the above described reasons extremely difficult to address under a V/C for LNG.

The same option regarding heel can be found in e.g. ShellLNGTime 1, clause 16. If not stipulated otherwise, the owner shall retain sufficient heel after discharge of the cargo to maintain the temperature in the tanks until the vessel arrives at the next port of call, hence ready to load. The vessel shall be enabled to remain 24 hours in that condition at port. The charterer shall however provide and pay for additional heel if the heel retained by the owner is not sufficient due to mistakes not on part of the owner or for other force majeure reasons.

⁸⁵ Cargo intentionally retained after discharge operations to maintain tank temperature on ballast voyage to arrive cold at next port of call.

Under a T/C the heel topic is not much of a problem, since the charterer will be the same person for consecutive voyages, if not over a decade or longer.

2.3 LNG Compensation

The following clause F of the draft regulates the price for any LNG that might have been consumed/ used by the owner and which has to be compensated to the charterer. This price is applicable whenever LNG compensation is stipulated in this contract. This can be for retained LNG as heel, or for forced boil-off exceeding the guaranteed rate⁸⁶.

2.4 Freight

Clause G of the draft renders for a blank space to enter the lump sum freight. This is a very standard clause in all kind of trades, under T/C also as under V/C trade. What is remarkable is that there is also a concept of fuel cost adjustment. If the owner has duly documented, increased fuel costs he might add this to the lump sum freight. But what does this really mean? It may be applicable when the owner has higher fuel costs, due to a voyage where he has to buy fuel in a port with high bunker costs; this would be fair, because it was the charterer who ordered the vessel to go there. Additionally this author could image that this clause can be applicable if the charterer orders the vessel into an area where rough climate causes higher fuel consumption. Anyway, this concept remains difficult to understand and should be clarified in the final version.

This concept is unusual to normal V/C's⁸⁷, and may take away the simplicity that would be an advantage towards normal T/C's. It will also take away the possibility of the owner/

⁸⁶ The boil-off below the boil-off rate shall be free of charge, cf. GIIGNL LNGVOY DRAFT – 2009, clause 2.

⁸⁷ Cf. e.g. GasVoy 2005, clause 13.

charterer to understand their costs and revenues by fixed freight rates prior to entering the contract. However, this clause will later in the final version eventually be a choice-clause: The parties can agree to implement this clause, or may decide not to.

2.5 Description and condition of the vessel

Part II of the draft starts off with a description of the features the vessel shall have on delivery, and which it shall maintain to have throughout the voyage. These clauses are very common to most charter parties⁸⁸ and shall improve safety for the crew, the ship, or third party estate, the cargo and the environment. If the vessel is not in the said condition this may give the charterer a right to claim damages, or even cancel the charter. But this right might not be as strong under a V/C as under a long term T/C, since the voyage is much shorter. Thus a small deficiency may not be of that big importance as under a long term T/C. The description clause concerns reliance in classification of the vessel⁸⁹; proper insurance⁹⁰; and other requirements to increase safety on board such as a CAP⁹¹ certificate if she is 15 years or older; her fitness regarding the fulfilment of her service, capability to pass Suez and Panama Canal, documentation requirements, instalment of the ISM code⁹², the HSE⁹³ compliance and crewing requirements regarding the shipboard personnel. All these clauses are common in major C/P's and do not need further discussion.

⁸⁸ E.g. ShellLNGTime 1, clause 1, ShellTime 4, clause 1, GasVoy 2005, clause 1, TC, clause 1, ShellVoy 6, lines 10 et seq.

⁸⁹ Classification Society must be a member of IACS, <http://www.iacs.org.uk/>

⁹⁰ Vessel must be insured with accredited insurance brokers with P&I, H&M, pollution and other customary insurance cover in the LNG trade to an extend that is normal for a vessel of her type.

⁹¹ CAP Hull is a voluntary, thorough verification of the actual condition of the hull. CAP has been created out of a wish from ship owners to document the quality of their vessels beyond the scope of classification. CAP is an independent and thorough verification of the actual condition of a vessel at the time of inspection.

⁹² International Safety Management Code, accessible at http://www.imo.org/humanelement/mainframe.asp?topic_id=287

⁹³ Abbreviation for *Health Safety Environment*.

It has been proposed by a GIIGNL member to include a clause that can e.g. be found in ShellVoy 6, lines 55-59⁹⁴ regarding the owners' obligation to give exact and correct answers to any questionnaire regarding the vessel and keep the charterer up to date should any of these facts change during the charter period.

2.6 Warranty, Voyage and Cargo

Also clause 2 of the draft has common features with other V/C's⁹⁵. It is a warranty that the vessel shall proceed as ordered with all reasonable dispatch⁹⁶, being seaworthy and being fit to load and discharge the contractual cargo (LNG). All foregoing conditions shall be attained by the exercise of due diligence, within the limits of perils of the sea and what can be described beyond owner's and master's control⁹⁷. The owner shall also maintain due diligence any given specifications regarding cargo pressure or temperature. Also this clause could imply a right to damages, or even to cancel the charter if the warranty is broken.

Additionally, clause 1 regulates the guaranteed boil-off rate: The owner warrants that a given boil-off rate per day is not exceeded⁹⁸. The vessel is entitled to use all naturally generated boil-off to steam the engines free of charge. Any excess boil-off (either because the rate is exceeded or forced boil-off) shall be paid according to the LNG compensation as

⁹⁴ Which reads "Owners warrant that any information provided on any Questionnaire(s) requested by Charterers or any other vessel information/details provided by Owners to Charterers is always complete and correct as at the date hereof, and from the time when the obligation to proceed to the load port attaches and throughout the charter service. This information is an integral part of this Charter but if there is any conflict between the contents of the Questionnaire(s), or information provided by Owners, and any other provisions of this Charter then such other provisions shall govern".

⁹⁵ E.g. GasVoy 2005, clause 1 and 2.

⁹⁶ Dispatch (or alternative spelling *despatch*) means Speed. Under English Common Law, it is implied in contracts of carriage that the ship-owner must perform the voyage with reasonable dispatch where the contract does not provide for a time when the obligation must be performed, cf. Debattista, Charles: *Southampton on shipping Law*, London 2008, p. 59.

⁹⁷ It has been proposed by a GIIGNL member that exceptions and liabilities should rather be placed in a separate clause. This may be changed in the final version.

⁹⁸ On a typical voyage an estimated 0.1% - 0.25% of the cargo converts to gas each day, depending on the efficiency of tank system and the roughness of the voyage.

defined in clause F unless the charterer instructed owner to force boil-off (e.g. the gas price is lower than bunker fuel).

It is notable that the owner can use the boil-off up to the guaranteed boil-off rate without costs to steam the engines. As aforementioned the ship owner has to pay for bunkers, and yet he can use the boil-off free of charge. Thereby he saves money, while the cargo owner loses cargo. But it would on the other hand be complicated to regulate otherwise. The boil-off is lost anyway, so why not let the ship-owner profit from it. It would actually be quite unfair if there would be a situation where bunker prices lie below the LNG compensation, and hence the owner would be forced to use more expensive LNG rather than bunkers.

It has been submitted by GIIGNL member that there should be a period specified where the boil-off is defined. This could e.g. be the period from the departure from the loading port to arrival at port of discharge. In this regard the draft is a bit blurry as how to measure the actual boil-off rate.

It is also recommended to have exceptional cases, such as rough climate, to be excluded/ considered in the calculation. As aforementioned will the amount of boil-off vary if the vessel sways due to extreme wind or wave conditions, and hence an abnormal grade of sloshing occurs. The drafting committee could implement a clause stipulating that e.g. Beaufort scale 4 wind passages are to be excluded from calculations etc. This would be a novelty in LNG trade, but as this author maintains a fair solution.

The next part of this clause concerns the vessels ability to load/ unload the cargo in a specified speed. This clause has also been modelled after well established C/P's⁹⁹.

⁹⁹ Cf. ShellLNGTime 1, clause 26. (d).

2.7 Notice of readiness and laytime

In clause 3 the draft gives a definition of the Notice of Arrival (NOA¹⁰⁰) and the Notice of Readiness (NOR¹⁰¹), which are prerequisites for the laytime to start¹⁰². According to the draft, laytime starts to run upon the expiration of six (6) hours after proper issuance of such Notice of Arrival, or upon proper issuance of Notice of Readiness, whichever first occurs¹⁰³.

It may not seem necessary to define NOA and NOR in the draft as MSA¹⁰⁴'s tend to have different definition therein. But the rationale behind the inclusion is that the shipowner may not be involved in the MSA if he is not the seller or buyer. But it is also common understanding in the drafting committee that the NOA or NOR above may need to be amended to be in line with the definition in the specific MSA. This may be acknowledged in the final version of the draft. On the other hand are these definitions listed in the draft general principles in shipping and should not be amended to be in line with the MSA. There are possible constellations where neither the charterer nor the ship-owner is a party to the MSA, and hence this should not dictate over what is customary in shipping.

¹⁰⁰ Cf. GIIGNLLNGVOY draft 2009 clause 3: Upon arrival at the pilot boarding station or customary anchorage at each port of loading or discharge, the Master or his agent shall give the terminal and the Charterer or his agent notice by email and/or fax that the Vessel has arrived (Notice of Arrival). AsbatankVoy, clause 6:

¹⁰¹ Cf. GIIGNLLNGVOY draft 2009 clause 3: Upon berthing and being ready for cargo transfer, shall give further notice that the Vessel is ready to load or discharge her cargo (Notice of Readiness). Cf. other C/P's: AsbatankVoy, clause 6: NOR shall be given at "arrival at customary anchorage", laytime starts six hours later, or ShellVoy 6, clause 13: "Time at each loading and discharging port shall commence to run six hours after the vessel is in all respects ready to load or discharge and written notice thereof has been tendered by the master [...] and the vessel is securely moored at the specific loading or discharging berth".

¹⁰² Subject to the express terms of the C/P laytime will begin to run when three requirements are satisfied: The ship must have arrived (i.e. given a NOA), it must be ready (i.e. given a NOR) and the vessel must in fact be ready to load (according to the terms of the C/P, cf. e.g. clause E.1 of the GIIGNL draft regarding tank conditions). Cf. Edkins, Malcolm/ Dunkley, Ray: *Laytime and Demurrage in the Oil Industry*, London 1998, p. 22 et seq. Are all those requirements fulfilled, the allowed time for loading and discharging of the cargo will start to count.

¹⁰³ Cf. GasVoy 2005, clause 7: Here it is stipulated that laytime either starts at the expiration of six hours after NOR, or upon completion of mooring at berth.

¹⁰⁴ Abbreviation for *Master Sale and Purchase Agreements*.

3 Demurrage

Clause 4 deals with demurrage, which reflects damages that have to be paid by the charterer to the owner for exceeding the allowed time window for loading/ discharging¹⁰⁵. According to the clause, the charterer shall pay demurrage per running day and pro rata for a part thereof at the rate specified in part I for any time used exceeding the laytime allowed.

The clause additionally lists situations where the charterer shall not be liable for exceeding the laytime which was caused by events that can be described as force majeure events, i.e. will the charterer not be liable for any occurred delay that was due to fire, explosion, storm, strike, lockout or by breakdown of machinery or equipment in or about the plant of the Charterer (or anyone he is liable for and which is not resulting from negligence). Nor shall the charterer be liable for delay caused by strike, lockout, stoppage or restraint of labour for personnel and persons the ship-owner is liable for. This can also be a tugboat or pilots.

Clause 4 is the very standard “demurrage clause”, but apart from stipulating that charterer’s have to pay demurrage, it entirely concentrates on what events exclude this obligation. These are effectively “force majeure” events, i.e. acts or events over which neither of the parties to the contract have any control. In this regard is the draft in line with all other major charterparties¹⁰⁶. Please be advised that most charterparties in the oil tanker trade stipulate at least half the daily demurrage rate in case one of the force majeure events realises itself¹⁰⁷. Contrast that with the draft, which stipulates that the ship-owner gets nothing in these occasions. This is yet another clause in favour of the charterer. It reflects the situation where the charterer in the LNG trade has a much stronger position than the charterer in the crude oil trade, where most vessels belong to major oil companies.

¹⁰⁵ Cf. Laytime, see above.

¹⁰⁶ Cf. in this context GasVoy 2005, clauses 9, 10 and 11, ShellVoy 6, lines 254 et seq.

¹⁰⁷ Cf. TexacoVoy 1994 clause 10, ShellVoy 6, line 268.

2.8 Loading and discharging

The given clause 6 of the draft concerns the risk and expense allocation during the loading and discharging process of the cargo. According to clause 6 cargo pumping shall be at the expense, risk and peril of the charterer as far as the loading and/or discharging terminal's permanent ship/shore connections are concerned, and shall be pumped into and out of the Vessel at the expense, risk and peril of the Owner as far as the Vessel's permanent ship/shore connections are concerned. The power for the abovementioned operation shall be provided by the vessel, and all extra crew expenses shall be for owners account. The charterer shall supply the necessary loading arms or hoses for loading and discharging operated under the control of the owner for charterers account¹⁰⁸.

The draft is in this regard inconsistent with given INCOTERMS¹⁰⁹. It could happen that a MSA stipulates an alternative allocation of risk concerning the abovementioned operations; hence the stipulations in this clause should be put in line with given INCOTERMS so they will not collide and cause uncertainty as to liability of the shipper.

2.9 Marine surveyor

Clause 7 of the draft addresses the charterers' right to appoint marine surveyors to make a vetting inspection of the vessel according to the OCIMF¹¹⁰ recommendations and practices. The owner has to communicate all relevant documentation for such inspection. All expenses shall be for charterers account. Should the survey, given that it was conducted by a competent authority, lead to a negative vetting recommendation of the vessel, then the

¹⁰⁸ Cf. GasVoy 2005, clause 12.

¹⁰⁹ Incoterms or international commercial terms are a series of international sales terms, published by International Chamber of Commerce (ICC) and widely used in international commercial transactions. For an illustration visit <http://www.iccwbo.org/incoterms/id3040/index.html>

¹¹⁰ Oil Companies International Marine Forum, assessable at <http://www.ocimf.com/>

charterer shall have the option to cancel this charter-party. If he chooses to do so all freight paid, if any, shall be promptly refunded.

This clause appears to be a bit fuzzy. It is not in line with vetting provisions found in the LNG shipping industry/practice¹¹¹. First, it does not stipulate any standard routine the surveyors are supposed to follow. It would add to clarity to specify a standard that the Marine Surveyor shall use. Since a SIRE¹¹² inspection is required in Part II, clause 1 (q) on part of the owner, the vetting performed by charterers should also be conducted based on the SIRE. Additionally, it seems too harsh to give the charterer a right to cancel the charterparty straight away. In a normal business conduct, charterer and owner would make a reasonable endeavour to improve the situation, before the Charterer exercises the cancellation right. Following this rationale, it would be better to include such a rectification period, before the charterer would be allowed to cancel.

3. General exceptions clause

Clause 10 is a typical general exceptions clause¹¹³, listing situations where the owner of the vessel is not liable for any loss or damage. It lists persons for which fault or neglect in the navigation of the ship where the owner shall not be held liable, even though they have been employed by him. This can be a situation where the master disregarded traffic rules and hence caused damage. Also for force majeure situations such as fire shall the ship-owner not be liable for, nor shall the owner be liable for an Act of God; act of war or perils of the sea; act of public enemies, pirates or assailing thieves etc.

¹¹¹ Cf. e.g. ShellLNGTime 1, clause 25: Here the charterer has the right to survey the vessel, but he has no right to cancellation if surveyors find negative recommendation.

¹¹² SIRE is a standard vetting protocol.

¹¹³ Cf. e.g. GasVoy 2005, clause 24, ShellLNGTime 1, clause 29, ShellTime 4 clause 27, ShellVoy 6, lines 419 et seq, TC, clause 27.

This clause in the draft, however being very standard, has been opposed by GIIGNL members, since it is believed to be to owner friendly in the way that it is missing some points. It does not have exceptions from exceptions, e.g. a clause that can be found in other major C/P which states that the owner shall nevertheless be liable for vessel warranties, conditions of the vessel, personnel etc¹¹⁴.

3.1 Bills of lading, war risks, limitation of liability and deviation

Clause 11 of the draft is again very common to most C/P's¹¹⁵. This clause has almost no relevance in LNG trade because LNG cargoes are normally not traded by use of B/L's, at least not under T/C's; There the LNG is transported from the producer to the importer under long term sales contracts, where the charterer of the vessel is either the seller or the buyer. Thus, no B/L is needed. Under a V/C on the other hand, the consignee of the spot cargo may not be known when the charterparty is signed, and hence the third party who will buy the cargo can rely on a B/L.

The clause links the master - even though he is appointed by the owner - with the charterer in that the charterer will have the right to order and direct the master regarding the signing of the B/L. The charterer on the other hand has the duty to indemnify the owner against all consequences or liabilities that may arise from signing bills of lading in accordance with the directions of Charterer or their agents, to the extent that the terms of such bills of lading fail to conform to the requirements of the draft. This clause i.e. stipulates charterers' liability for the signed B/L (since it is the charterer who has the right to direct the master). Additionally stipulates that the charterer has to indemnify the ship-owner if he orders the

¹¹⁴ As e.g. the ExxonMobil VOY2005: The exceptions stated in of this Clause shall not affect Owner's warranties and undertakings herein with respect to the condition of Vessel, the obligations of Owner in respect of the loading, handling, stowage, carriage, custody, care and discharge of the cargo and/or the rights or obligations of either owner or charterer with respect to laytime or demurrage as elsewhere provided in this Charter.

¹¹⁵ Cf. inter alia TC, clause 13, GasVoy 2005, clause 25, ShellVoy 6, lines 444.

master to sign a B/L that triggers liability exceeding what the owner under the V/C had already. This can be towards any third party such as cargo owners.

Criticism arose regarding the missing reference to the Letter of indemnity (LOI)¹¹⁶.

After this the draft incorporates the most common protective clauses that are to be found in B/L or C/P's. First, the clause Paramount¹¹⁷ and the New Jason clause¹¹⁸ (clause 11 ii) are incorporated. Additionally, the draft states that general average¹¹⁹ (GA) shall be adjusted according to the York/ Antwerp Rules 1974 as amended 1994¹²⁰ and incorporates the

¹¹⁶ The LOI is a written statement in which one party seeks to compensate another for the costs and consequences of carrying out a certain act. For example, a shipper who has been delayed in sending the original B/L to the receiver may instruct the master of the ship or the ship-owner to release the cargo to a named third party without production of the original B/L. The master or the owner, if they agree, may require a letter of indemnity from the shipper for the consequences of complying should it turn out that the named party is not entitled to take delivery of the goods. Another example is a request by the shipper to discharge the goods in a port other than the one listed in the contract of transport. It should be noted that, as a rule, any such letter which seeks to indemnify against an act which is intended to defraud an innocent third party is unenforceable in a court of Law. Cf. Brodie, Peter: *Dictionary of Shipping Terms*, 5th edn, London 2007, p. 147.

¹¹⁷ Clause in a B/L or C/P which regulates that the contract of carriage is governed by the Hague Rules or Hague-Visby Rules or the enactment of these rules of the country that has jurisdiction over the contract. Cf. Debattista, Charles: *Southampton on Shipping Law*, London 2008, p. 49.

¹¹⁸ This clause is commonly found in B/L and C/P, see TankerVoy 87 clause 28 and Combiconbill clause 21. It is a protective clause inserted in a C/P or a B/L which stipulates that the shipowner can recover in general average (GA) even when the loss is caused by negligent navigation. This clause followed from the decision of an American court. While American law exempted a ship-owner from liability for loss or damage to cargo resulting from negligent navigation, this did not entitle the ship-owner to recover in GA for such a loss. Cf. Bull, Hans Jacob/ Falkanger, Thor/ Brautaset, Lasse: *Scandinavian Maritime Law: the Norwegian perspective*, 4th edn, Oslo 2004, p. 469.

¹¹⁹ "A deliberate sacrifice or expenditure incurred for the common safety of the adventure. Those interests that benefit from the sacrifice or expenditure contribute rateably towards the loss". Cf. Branch, Alan E: *Dictionary of Shipping*, London 2005, p. 152.

¹²⁰ Assessable at <http://www.jus.uio.no/lm/cmi.york.antwerp.rules.1994/doc.html>

commonly used both to blame collision clause¹²¹. Finally, the draft incorporates the limitation of liability¹²² principle, the war risks clause¹²³ and the deviation clause¹²⁴.

3.2 Lien

Clause 11 of the draft renders the owner a lien on the cargo for all freight, deadfreight, demurrage and costs including attorney fees of recovering the abovementioned monies. The charterer has a lien on the vessel for any freight prepaid and not earned. Also this clause is pretty standard¹²⁵, limited to the charterers' lien on the vessel for prepaid freight which seems to be a novelty.

¹²¹ That is a clause in a B/L or a C/P which states that, in a both to blame collision, the owners of the cargo must indemnify the carrying ship against any amount paid by the carrying ship to the non-carrying ship for damage to that cargo. The need for this clause arose because under American law, a cargo owner is not able to make any recovery from the carrier for damage resulting from negligent navigation, but may instead sue the non-carrying ship which in turn seeks recovery from the carrying ship in proportion to its fault. This would render a carrier indirectly liable for a loss for which he is not directly liable to the cargo owner. The clause has, however, been held to be invalid in the American courts when incorporated into a contract with a common carrier. Cf. Brodie, Peter: *Dictionary of Shipping Terms*, 5th edn, London 2007, p. 45.

¹²² Under this principle there is a maximum sum of money payable by a carrier to a shipper or B/L holder for any damage or loss to the cargo for which the carrier is liable under the contract of carriage. The limitation may be per attached to any piece or package, or per tonne or per container according to the particular contract. The amount of the limitation is determined by agreement of the two parties or by law and varies between the different sets of rules (Hamburg Rules, Hague-Visby Rules, Hague Rules and the new Rotterdam Rules), some being more cargo friendly or vice versa.

¹²³ A War risks clause in a C/P or a B/L stipulates the actions the master can take if the ship is put at risk because of war should the voyage proceed according to the contract. The outcome is that the master would not be forced to proceed if he would put the ship or the crew at risk.

¹²⁴ That is a clause in a B/L or a C/P which allows the ship-owner to deviate from the agreed route. It may permit the vessel to call at unscheduled ports for whatever reason, or to deviate from the route to save human life or property. The clause can vary from contract to contract. In a T/C this clause is also known as a putting back clause.

¹²⁵ Cf. GasVoy 2005, clause 15,

3.3 Law and arbitration

Clause 15 of the draft is a typical choice of law clause; it concerns the parties' choice as to which law shall apply to any conflict, and which court shall or may hear such a case. The draft stipulates that such a conflict which cannot be resolved by mutual agreement within 90 (ninety) days after the conflict arose, shall exclusively and finally be settled by arbitration in a court of choice, governed by the rules of arbitration of choice. Such arbitration shall be held by 3 arbitrators in a chosen language. Each party shall appoint one arbitrator, the third one to be agreed upon by both parties within 60 days after the commencement of arbitration. The arbitration award will be binding and final on the parties, but may be challenged in an ordinary, authorised court, by regular legal proceedings in the court of choice.

Even though this clause is a standard clause in C/P's it has been proposed by GIIGNL members to include more standard wording, e.g. the wording of one of the Shell C/P family. This would clarify e.g. notices by email provisions etc.

Additionally one could criticise that the clause is leaving blank some issues. For example remains the draft silent regarding the problem when the two parties cannot agree on the third arbitrator, which is normally regulated by most C/P's¹²⁶. This may follow from the applicable rules, but it wouldn't do harm to expressly mention it.

It would in addition add to potential time and cost savings if the draft would regulate small claims procedure, i.e. claims below USD 50.000. Also this is regulated in major C/P's¹²⁷.

¹²⁶ Cf. regarding this problem ShellTime 4, clauses 46 (b) (i),(ii): The parties shall jointly appoint a sole arbitrator not later than 28 days after service of a request in writing by either party to do so. If the parties are unable or unwilling to agree the appointment of a sole arbitrator in accordance with (i) then each party shall appoint one arbitrator, in any event not later than 14 days after receipt of a further request in writing by either party to do so. The two arbitrators so appointed shall appoint a third arbitrator before any substantive hearing or forthwith if they cannot agree on a matter relating to the arbitration. The same wording can be found in ShellLngTime 1, clause (b), (i), (ii). Cf. also ShellVoy 6, lines 802 et seq.

¹²⁷ Such as in ShellVoy 6, line 815 et seq.

Other C/P's provide for mediation, which could also be a fast and cost-effective way of dealing with a given conflict¹²⁸

3.4 Subletting/ Assigning

This given clause states that, subject to owners approval which shall not be unreasonable withheld, the charterer has the right to sublet the vessel further to another subcharterer. However the charterer shall remain responsible for the fulfilment of the contract.

This clause is in line with most major C/P's¹²⁹, though it has been proposed to include novation¹³⁰ into the draft. But on the other hand is novation not a common thing to regulate in V/C, since it is a contract for only one voyage. It is more likely that the charterer under a long term T/C wants to switch his legal position to the charterparty with another party; Maybe where he finds out that he cannot/ don't want to fulfil his obligations any more, while somebody else wants to/ can do this.

¹²⁸ Cf. TC, clause 41 (b).

¹²⁹ Cf. GasVoy 2005, clause 27, ShellVoy 6, lines 411-414, TC, clause 18.

¹³⁰ Novation in contract law describes an act of either replacing an obligation to perform with a new obligation, or replacing a party to an agreement with a new party.

4. Summary and conclusions

This thesis has at first given an overview over the LNG market in general and its spot markets especially. Regarding the development of a bigger spot market for LNG one could say that there is a bit of a chicken and egg issue here. Since the LNG industry still has so much of its trade covered by long term sales agreements and matching long term time charters, it will take time for a robust spot market to develop. Hence today for example, there is a surplus of LNG ships and only a few voyage charter cargoes available, therefore the charter rates are low and the owners with these excess ships are hurting financially. Not only shipping capacity is a key element in growth, but also shore based installations can be, if too less liquefaction/ regasification capacity is available, this will create a bottleneck in the supply chain. But as this capacity is going to be expanded largely in the near future, as new markets develop, and as new tonnage is added to the trade, the LNG market will expand significantly. Mainly this will most probably affect the long-term business, but because of abovementioned reasons this will always boost the spot market accordingly.

The latest forecasts just some days before this thesis will be delivered predict that the charter rates for spot trade are going to continue to grow in 2010 (\$ 20.000s in June to more than \$40.000 in the last two weeks of August). This is due to a growing shortage of LNG carriers and rising demand for spotgas cargoes on the sales market¹³¹. This means that the spot shipping market on the one hand sees a fall in tonnage supply, while the LNG sales market sees a rise in spot cargoes. Golar LNG Energy chief executive Oscar Spieler said in Lloyd`s List that “we saw a tightening of the market in the third quarter. All spotvessels are currently working and will be to at least the close of the quarter,” and that “going into the winter market, we believe the market will remain at today`s levels and maybe tighten further.

His expectations are in line with a positive outlook by Norwegian shipbrokers Lorentzen & Stemoco, which said the export of more spot LNG cargoes had led to the shortage

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of LNG carriers. “The tightening vessel availability is a result of new spot volumes and emerging new buyers, as well as a result of more east [of Suez Canal] to west trade with added tonne-miles. Charter rates and vessel utilisation is likely to improve further,” a Lorentzen & Stemoco broker said, also in Lloyd’s List.¹³²

Taken into consideration the abovementioned comments this author maintains that the spot market is set to expand. In order to give the trade an useful tool in negotiating terms, they need a suitable V/C, or else they will keep on using T/P’s. The GIIGNL draft has a potential to become such a tool.

To summarise the GIIGNL draft and its potential for broad usage in the spot market one could say that the main advantage for a charterer would be that he don’t have to go into a lot of details and parameters with the ship owner. The charterer is offered the guaranteed performance (like in a TCP) but will benefit from any improved performance; one example is that the charterer can decide if boil-off is to be forced or not. This saves him money if the gas price is lower than the LNG compensation in the C/P.

The concept of the tanks condition to be alternatively cold or warm upon arrival is advantageous to both parties: As aforementioned will it be complicated for the owner to calculate how much heel is needed to arrive cold at the next port of call. This has to do with the uncertainty of the next engagement. Therefore he can decide to arrive warm and the problem is solved. For the charterer on the other hand it is advantageous that if the gas price is low he can order the vessel warm and use his own gas to cool down the tanks, which saves him money.

The success of the draft will pretty much depend on how many oil majors will agree with the solution. Given the strong position of the oil majors when acting as charterers, the draft will be success if they decide to use it. The ship-owners will often be forced to use the charterparty proposed by an oil major, or they take their business elsewhere. As all

¹³² Cf. *Dearth of LNG carriers to keep spot rates high in 2010*, Lloyd’s List, 1.09.2010.

GIIGNL members were invited to comment on the draft this may be achieved by including their submissions. One has to be careful though not to make it too charterer friendly. This can be achieved by having it vetted by an experienced law firm. But then again, lawyers do as they told, so the result depends on how candid they will act. The vetting is supposed to happen before the draft will be finalised. As mentioned before was the release date set to be late 2009, but by September 2010 it is still unclear when it will be finished. The given draft itself in some places appears to be a bit of a patchwork of different major charterparties. Additionally it contains some clauses that are uncustomary in LNG trade, which makes it harder to understand for charterers and ship owners. It is true that it should not contain too many clauses, in order to keep its advantage towards complicated time charters, but it seems that it is missing some important clauses. At least some issues described above should be integrated into the law and arbitration clause, and the ports listed should be made *safe* ports. As this author maintains the concept extra fuel costs added to the freight needs to be clarified. Ship-owners do not want to read and understand what is written in the MSA, so the definition of the NOA and the NOR need to be in line with the MSA. This duty must be imposed on the charterer though, since he is the one who might be involved in the sales contract. Additionally it has been noted by some GIIGNL members that they would appreciate the inclusion of the following clauses:

DRUGS AND ALCOHOL

DOCUMENTATION FROM OWNERS TO CHARTERERS

ADMINISTRATION CLAUSE –replacing written document

CARGO RETENTION CLAUSE

ISPS/MTSA CLAUSE

ETHICS AND ANTI-CORRUPTION CLAUSE

BROKERS COMMISSION CLAUSE

CONSTRUCTION OF CHARTER CLAUSE

US CUSTOMS REGULATION CLAUSE, US COASTGUARD CLAUSE

BACKLOADING

ICE

GENERAL INSURANCE CLAUSE

Some of these issues may hence be addressed in the final version of the charterparty.
Others may not, for the sake of simplicity.

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List of Abbreviations

BIMCO	Baltic and International Maritime Council
B/L	Bill of Lading
C/P	Charter Party
COGSA	Carriage of Goods by Sea Act (1992)
GA	General Average
HSE	Health Safety Environment
H&M	Hull and Machinery insurance
ICC	International Chamber of Commerce
ICS	International Chamber of Shipping
Incoterms	International Commercial Terms by ICC
ISM Code	International Safety Management Code
LNG	Liquefied Natural Gas
LOI	Letter of Indemnity
MSA	Master Sale and Purchase Agreement
NOA	Notice of Arrival
NOR	Notice of Readiness
OCIMF	Oil Companies International Marine Forum
P&I	Protection and Indemnity insurance
SIGITTO	The Society of Gas Terminal and Tanker Owners
SOLAS	International Convention for Safety of Life at Sea
T/C	Time Charter

V/C

Voyage Charter

Annex

Questionnaire spot-market LNG

1. The LNG spot market is as today something below 10% of the total LNG market; do you see a development in the near future, and if so, why do you think that is. In which trades/ areas would you suppose the market to grow the most?

2. How would you weight the following aspects in describing the current size of the market:

- a) Quantity of shore-based installations
- b) Incompatibility of tonnage/installations
- c) Availability of LNG tonnage in the trade
- d) Vessels are engaged in trade/ projects to transport own cargo
- e) Expenses for cooling down a tank for just one voyage
- f) Inadequacy number of suitable/ agreed/ convenient V/C's for LNG trade
- g) The risk of plunging rates due to fluctuations in the market
- h) Others (*please indicate*):

3. In the LNG spot-market today T/C are in use, even though bunkers have to be bought at delivery and re-bought at redelivery, why is that still more convenient than using a V/C? What are the most important weaknesses of V/C documents available in LNG trade today? Are there any standard/agreed V/C's which are to a certain extend in use?

4. Which clauses do you consider to be the most important clauses in a LNG V/C to strike a fair balance between the parties? Which clauses do you think are important to be included/ not included to make the V/C convenient for both parties, rather than using a T/C or a V/C which is not specially intended/ drafted for LNG trade (such as SHELL VOY 6 e.g.)?

5. Have you heard about the GIIGNL and if so, about their project on standard shipping documents such as the LNG V/C?

6. The GIIGNL V/C draft is hoped for to be broadly accepted by the business. Therefore the drafting committee is currently implementing comments by their members into the draft. If this is done to a large extend, do you think the GIIGNL draft can achieve uniformity?

LNG CARRIER VOYAGE CHARTER PARTY

BETWEEN

AS OWNER

AND

AS CHARTERER

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LNG CARRIER VOYAGE CHARTER PARTY

PREAMBLE:

Place

Date

It is this day agreed between [insert company name, address and number of registration] ("Owner"), being the disponent owners of the LNG vessel called [insert the name of the Vessel] ("Vessel") and [insert company name, address and number of registration] ("Charterer") that the transportation herein provided for will be performed subject to the terms and conditions of this Charter Party, which includes this Preamble, Part I, Part II and the Appendix A. In the event of a conflict, the provisions of Part I will prevail over those contained in Part II.

PART I

A. DELIVERY INTO THE LAYCAN

Commencing: **[insert the date]** at **[insert the hour]** hours Local Time

Cancelling: **[insert the date]** at **[insert the hour]** hours Local Time

If, for another reason than a force majeure event or the Charterer's fault, the Vessel is not delivered by the Owner during the LAYCAN period, the Charterer would have the right to terminate the charter-party and the Owner would have to pay liquidated damages to the Charterer amounting to **[X] (X)** time the FREIGHT, being specified that this limitation of damages would be broken in case of non-delivery caused by Owner's commercial motives.

Extra-Cancelling: If the Vessel is not loaded, for another reason than a force majeure

event or Owner's fault, on the **[insert the date]** at **[insert the hour]** hours Local Time, the Owner would have the right to terminate the charter-party, being specify that the FREIGHT would then be due.

B. LOADING PORT

[Insert the port or the optional ports where the Vessel must be delivered into the Laycan]

The estimated date/time of departure from the Loading port is: **[Insert date(s) and time]**

C. DISCHARGING PORT: [Insert the port or the optional ports]

The unloading window for arrival at the Discharging Port shall be: **[Insert date(s) and time]**

D. CARGO Full Cargo Liquefied Natural Gas (LNG)

The vessel SHALL / SHALL NOT complement natural boil-off with forced boil-off to steam at the required service speed.

E. TANKS CONDITIONS

Owner and Charterer shall agree that either paragraph (a) or paragraph (b) immediately below shall form the complete text of this Clause E. The non-applicable paragraph shall be struck-through and the change initialed at the time of execution of this Charter.

1.1.1.1

E.1. Before loading

- (a) The Vessel shall arrive at the Loading Port with her cargo spaces under a natural gas atmosphere and the tanks pre-cooled to allow loading to commence upon berthing. The Vessel shall be capable of maintaining such pre-cooled condition until the end of the estimated Loading Window. Should the Vessel fail to arrive or maintain her

cargo tank condition as specified herein, the Charterer shall make additional LNG cargo available to the Vessel to purge and/or cooldown as necessary to permit loading; however, the cost and time of any such additional LNG shall be to Owner's account.

- (b) The Vessel shall arrive at the Loading Port with her cargo spaces under an atmosphere of INERT GAS / NATURAL GAS. The Charterer shall make available to the Vessel any LNG as may be required to purge (gas-up) the cargo spaces with natural gas or to cool down the Vessel's tanks in preparation for loading. The net cost of such LNG for purging (gassing-up) and cooling down shall be to charterer's account. The time required for purging or cooldown shall be to Owner's account, except for delays caused by the terminal.

1.1.1.2

E.2. After unloading

- (a) The Vessel SHALL be entitled to retain up to **[Insert the number of cubic meters]** cubic meters of LNG cargo upon completion of discharge for the purposes of cold maintenance.
- (b) The vessel SHALL NOT be entitled to retain any pumpable liquid heel upon completion of discharge. If non-pumpable LNG is remaining on tanks, Owner shall pay it as per LNG COMPENSATION hereafter.

F. LNG COMPENSATION

Wherever pursuant to this Voyage Charter Party any LNG Compensation is due, the LNG price to be paid shall be **[Insert the price]/MMBTU**).

G. FREIGHT [Insert the lump sum freight, possibly increased by Owner's duly documented fuel costs to be calculated at the end of the voyage]

H. FREIGHT PAYABLE to Owner's designated bank account:Bank: **[insert]**Account No.: **[insert]**Other Information: **[insert]**

An advance partial payment of the Freight, in the amount of [**Insert a percentage of the lump sum freight**] shall be paid to Owner upon the vessel's arrival at the Loading Port in the LAYCAN period. The balance of the Freight shall be payable upon completion of discharge.

I. TOTAL LAYTIME IN RUNNING HOURS **[Insert the number of running hours]**
See furthermore section 3, Part II

J. DEMURRAGE: **[Insert the demurrage rate]** per day and pro rata for any portion of a day.

K. GENERAL AVERAGE AND ARBITRATION

The place of General Average and arbitration proceedings to be **[Insert the places]**.

L. CARGO MEASUREMENT

All cargo measurement hereunder for the calculation of freight or any warranties, hereunder, related to cargo or heel volumes shall be determined from the final custody transfer documentation, certifying measurements taken on board the Vessel immediately before and after cargo transfer at the Loading and Discharging ports, as applicable. Such measurements shall be witnessed (signed) by both the Vessel and the terminal providing or receiving the cargo. The Charterer may provide its own representatives to be present at any custody transfer measurement applicable to cargo carried hereunder. Custody transfer measurements shall be carried out following the recommendation of GIIGNL custody transfer handbook.

M. SPECIAL PROVISIONS

The charterer has the option to cancel this charter-party up to **[Insert the date and hour]** if the vetting of the Vessel is negative.

PART II

1. DESCRIPTION AND CONDITION OF VESSEL

At the date of delivery of the Vessel under this charter and throughout the charter period:

- (a) she shall be classed by a Classification Society, which is a member of the International Association of Classification Societies;
- (b) she shall be insured with reputable insurance underwriters to a level and extent which is not less than would generally be taken out on vessels of her type, including hull and machinery, protection and indemnity, pollution and such other coverage as is customary in the LNG industry. The LNG Ship shall be entered for insurance with a member which has full entry into the International Group of P&I Clubs.
- (c) if she is fifteen years old or over she shall have and maintain a LNG Condition Assessment Program (“CAP”) of not less than two (2);
- (d) she shall be in every way fit to load, carry, discharge and measure Liquefied Natural Gas (“LNG”) in international trade;
- (e) she shall be tight, staunch, strong, in good order and condition, and in every way fit for the service, with her machinery, boilers, hull and other equipment (including but not limited to hull stress calculator, radar, computers and computer systems) in a good and efficient state;
- (f) her tanks, valves and pipelines shall be liquid and gas tight;
- (g) she shall have all her cargo measuring equipment and instrumentation calibrated and certified in accordance with the requirements of the Vessel’s Classification Society;
- (h) she shall have her insulation spaces prepared as per her containment system design conditions;
- (i) she shall comply with the regulations in force so as to enable her, if her size permits, to pass through the Suez Canal and Panama Canal;

- (j) she shall have on board all certificates, documents and equipment required from time to time by any applicable law to enable her to perform the charter service without delay. For the avoidance of doubt this will include, but will not be limited to, the Vessel's Certificate of Financial Responsibility;
- (k) she shall comply with the description appended hereto as Appendix A;
- (l) her ownership structure, flag, registry, classification society and management company shall not be changed during the execution of this charter-party;
- (m) Owner guarantees that it will operate:
 - (i) a safety management system certified to comply with the International Safety Management Code ("ISM Code") for the Safe Operation of Ships and for Pollution Prevention;
 - (ii) a documented safe working procedures system (including procedures for the identification and mitigation of risks);
 - (iii) a documented environmental management system;
 - (iv) a documented accident/incident reporting system compliant with flag state requirements;
- (n) Owner shall maintain Health Safety Environmental ("HSE") records sufficient to demonstrate compliance with the requirements of their HSE system and of this charter.
- (o) At the date of delivery of the Vessel under this charter and throughout the charter period:
 - (i) she shall have a full and efficient complement of master, officers and crew for a Vessel of her tonnage, who shall in any event be not less than the number required by the laws of the flag state and who shall be trained to operate the Vessel and her equipment competently and safely and in accordance with generally accepted international standards for LNG vessels;
 - (ii) all shipboard personnel shall hold valid certificates of competence in accordance with the requirements of the law of the flag state;
 - (iii) all shipboard personnel shall be trained in accordance with the relevant provisions of the International Convention on Standards of Training,

Certification and Watchkeeping for Seafarers, 1995 or any additions, modifications or subsequent versions thereof;

- (iv) there shall be on board sufficient personnel with a good working knowledge of the English language to enable cargo operations at loading and discharging places to be carried out efficiently and safely and to enable communications between the Vessel and those loading the Vessel or accepting discharge therefrom to be carried out quickly and efficiently. Owner shall ensure that the Vessel's Master and Chief Officer have attended a Ship Handling course acceptable to the Charterers and a Bridge Resource Management Course in accordance with the guidelines set by IMO.;
- (v) the terms of employment of the Vessel's staff and crew will always remain acceptable to the International Transport Worker's Federation and the Vessel will at all times carry a Blue Card;
- (vi) the nationality of the Vessel's officers given in the Appendix A referred to in Clause 1(k) will not change without Charterers' prior agreement which shall not be unreasonably withheld.
- (p) Owner shall keep a strict account of all cargo loaded, Boil-Off, and cargo discharged.
- (q) Owners shall arrange at their expense for a SIRE inspection to be carried out at intervals of six months plus or minus thirty days.

2. WARRANTY - VOYAGE - CARGO

The vessel shall with all convenient dispatch, proceed as ordered to Loading Port(s) named in accordance with sections B and C in Part I hereof, or so near thereunto as she may safely get (always afloat), and being sea worthy, and having all pipes and pumps in good working order, and being in every respect fitted for the voyage and for calling and handling cargoes at both loading and unloading ports, so far as the foregoing conditions can be attained by the exercise of due diligence, perils of the sea and any other cause of whatsoever kind beyond the Owner's and/or Master's control

excepted, shall load (always afloat) from the instructions of the Charterer a full and complete cargo of LNG, not exceeding what she can reasonably stow and carry over and above her bunker fuel, consumable stores, boiler feed, culinary and drinking water, and complement and their effects, and being so loaded shall forthwith proceed, as ordered on signing Bills of Lading, direct to the Discharging Port(s), or so near thereunto as she may safely get (always afloat), and deliver said cargo. If a specific cargo pressure or temperature is requested by the Charterer, the Owner shall, within the safe constraints of vessel design and certification, exercise due diligence to maintain the parameters requested.

BOIL-OFF RATE: The Vessel shall be entitled to use all natural boil-off from the LNG cargo as fuel under the Vessel's boilers. Owner warrants that the natural boil-off shall not exceed **[Insert the BOIL-OFF rate]** percent (**[Insert the BOIL-OFF rate]**%) of the Vessel's Gross Capacity per day of laden operation hereunder, and pro rata, and such boil-off shall be provided by the Charterer without cost to the Owner. Any boil-off (natural or otherwise) in excess of the above warranty shall be paid for by Owner at the LNG Compensation (as defined in section F, Part I) unless Charterer has instructed the owner to force boil-off.

LOADING AND UNLOADING RATES: Owner warrants that The Vessel shall be capable of loading and discharging the cargo as follows:

- (i) a full cargo may be loaded within **[Insert the number of hours]** if the Vessel's cargo tanks are colder than the tank design temperature for commencement of loading, excluding the time for connecting; disconnecting; cooling down; topping up and custody transfer measurement, and provided that the loading terminal is capable of pumping at least **[Insert the number of cubic meters]** cubic meters of LNG per hour to the Vessel at not less than 3.0 bar (gauge) pressure at the flange connection between ship and terminal utilizing a minimum of two liquid loading arms, and provided that the

terminal is capable of receiving all return vapour from the Vessel that may be generated when loading the Vessel at the above specified flow rate of LNG;

- (ii) a full cargo may be discharged within [**Insert the number of hours**], excluding the time for connecting; disconnecting; cooling down; starting up pumps; ramping up; ramping down for stripping at end of discharge and custody transfer measurement, and provided that the discharge terminal is capable of receiving LNG at a rate of at least [**Insert the number of cubic meters**] cubic meters of LNG per hour with a back pressure at the flange connection between ship and terminal not exceeding 100 meters of liquid LNG of specific gravity of 0.47 utilizing a minimum of two liquid unloading arms. The terminal must also be capable of providing sufficient return vapour to the Vessel to compensate for the displacement of the LNG being discharged from the Vessel;

3. NOTICE OF READINESS AND LAYTIME

Upon arrival at the pilot boarding station or customary anchorage at each port of loading or discharge, the Master or his agent shall give the terminal and the Charterer or his agent notice by email and/or fax that the Vessel has arrived (Notice of Arrival) and, upon berthing and being ready for cargo transfer, shall give further notice that the Vessel is ready to load or discharge her cargo (Notice of Readiness). Such Notice of Arrival shall not be given, without Charterer's sanction, before the commencement of the Laycan in connection to the loading, and before the commencement of unloading window in connection to the unloading specified in Part I

Laytime, as provided in section I Part I, shall commence upon the expiration of six (6) hours after proper issuance of such Notice of Arrival, or upon proper issuance of Notice of Readiness, whichever first occurs. However, where delay is caused to Vessel getting into berth after giving Notice of Arrival for any force majeure event, such delay shall not count as used laytime.

Laytime shall end at the loading port after completion of loading on dropping outward

pilot and at unloading port after completion of discharge on dropping outward pilot.

Any delay due to the Vessel's condition or breakdown or inability of the Vessel's facilities to cool down, load or discharge cargo shall not count as used laytime.

4. DEMURRAGE

Charterer shall pay demurrage per running day and pro rata for a part thereof at the rate specified in Part I for all time that loading and discharging and used laytime as elsewhere herein provided exceeds the allowed laytime elsewhere herein specified. The Charterer shall not be liable for any demurrage for delay caused by reason of fire, explosion, storm, strike, lockout, stoppage or restraint of labor or by breakdown of machinery or equipment in or about the plant of the Charterer, supplier, shipper or consignee of the cargo not resulting from negligence on their part or on the part of their servants or agents, or caused by strike, lockout, stoppage or restraint of labor for Master, officers and crew of the Vessel or tugboat or pilots. Any demurrage payable by Charterer shall be paid at the same time and in the same manner as the final freight payment hereunder.

5. SAFE BERTHING – SHIFTING

The Vessel shall load and discharge at any safe place or wharf, or alongside vessels, reachable on her arrival, which shall be designated and procured by the Charterer, provided the Vessel can proceed thereto, lie at, and depart therefrom always safely afloat, any lighterage to other vessels being at the peril of the Charterer. The Charterer shall have the right of shifting the Vessel at ports of loading and/or discharge from one safe berth to another on payment of all towage and pilotage shifting to next berth, charges for running lines on arrival at and leaving that berth, additional agency charges and expense, customs overtime and fees, and any other extra port charges or port expenses incurred by reason of using more than one berth. Time consumed on account of shifting shall count as used laytime.

6. LOADING AND DISCHARGING

The cargo shall be pumped into and out of the Vessel at the expense, risk and peril of the Charterer as far as the loading and/or discharging terminal's permanent ship/shore connections are concerned, and shall be pumped into and out of the Vessel at the expense, risk and peril of the Owner as far as the Vessel's permanent ship/shore connections are concerned. The Vessel shall supply her pumps and the necessary power for discharging in all ports, as well as necessary hands. All overtime of officers and crew incurred in loading and/or discharging shall be for account of the Owner.

The Charterer shall furnish, or cause to be furnished, the necessary loading arms or hoses for loading and discharging and such arms or hoses shall be connected and disconnected under the control of the Owner at the Charterer's expense.

7. MARINE SURVEYOR

The Charterer has the right to appoint a Marine Surveyor(s) in order, notably, to make a vetting inspection of the Vessel according to, notably, the recommendations and guidelines of the Oil Companies International Marine Forum (OCIMF). All relevant documentation required by the Marine Surveyor(s) shall be communicated promptly to the Marine Surveyor. The Charterer shall pay all expenses relating to the work undertaken by the Marine Surveyor(s). Should the survey of the Marine Surveyor(s) lead to a negative vetting recommendation on the Vessel by the vetting department of the Charterer or any other competent authority, the Charterer shall have the option to cancel this charter-party and all freight paid or advanced by the Charterer to the Owner, if any, shall be promptly refunded.

8. DUES AND OTHER CHARGES

Dues and other charges levied upon the Vessel, howsoever assessed, shall be paid
by Owner.

Dues and other charges upon the cargo shall be paid by Charterer.

9. CARGOES EXCLUDED

Only Liquefied Natural Gas (LNG) cargoes shall be loaded on the Vessel. Such cargo shall not exceed a specific gravity of 0.50, nor have a temperature lower than - 163 °C.

10. GENERAL EXCEPTIONS CLAUSE

The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or damage, or delay or failure in performing hereunder, arising or resulting from: - any act, neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navigation of the Vessel; fire, unless caused by the fault of the Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; or any loss or damage arising from inherent defect, quality or vice of the cargo; any act or omission of the Charterer or owner, shipper or consignee of the cargo, their agents or representatives; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery, unless caused by the fault of the Owner; unseaworthiness of the Vessel unless caused by want of due diligence on the part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault of the Owner. And neither the Vessel nor Master or Owner, nor the Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder, arising or resulting from: - Act of God; act of war; perils of the sea; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people; or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion.

11. BILLS OF LADING, WAR RISKS, LIMITATION OF LIABILITY AND DEVIATION

The Master, although appointed by Owner, shall be under the orders and directions of Charterer as regards the bills of lading, without prejudice to this Voyage Charter-Party. Charterer hereby indemnify Owner against all consequences or liabilities that may arise from signing bills of lading in accordance with the directions of Charterer or their agents, to the extent that the terms of such bills of lading fail to conform to the requirements of this Voyage Charter-Party.

i. CLAUSE PARAMOUNT.

(1) Subject to sub-clause (2) or (3) hereof, this bill of lading shall be governed by, and have effect subject to, the rules contained in the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25th August 1924 (hereafter the "Hague Rules") as amended by the Protocol signed at Brussels on 23rd February 1968 (hereafter the "Hague-Visby Rules"). Nothing herein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hague-Visby Rules. “

(2) If there is governing legislation which applies the Hague Rules compulsorily to this bill of lading, to the exclusion of the Hague-Visby Rules, then this bill of lading shall have effect subject to the Hague Rules. Nothing herein contained shall be deemed to be either a surrender by the carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the Hague Rules."

(3) If there is governing legislation which applies the Hamburg Rules compulsorily to this bill of lading to the exclusion of the Hague-Visby Rules, then this bill of lading shall have effect subject to the Hamburg Rules. Nothing herein contained shall be deemed to be either a surrender by the carrier of any of

his rights or immunities or an increase of any of his responsibilities or liabilities under the Hamburg Rules.”

(4) If any term of this bill of lading is repugnant to the Hague-Visby Rules, or Hague Rules or Hamburg Rules, if applicable, such term shall be void to that extent but no further.”

(5) Nothing in this bill of lading shall be construed as in any way restricting, excluding or waiving the right of any relevant party or person to limit his liability under any available legislation and/or law.

ii. **NEW JASON CLAUSE.** In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the carrier before delivery.

iii. **GENERAL AVERAGE.** General Average shall be adjusted, stated and settled according to York/Antwerp Rules 1974, as amended 1994, and, as to matters not provided for by those rules, according to the laws and usages at the port or place specified in Part I K of this Charter. If a General Average statement is required, it shall be prepared at such port or place specified in Part I K of this Charter, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the Charterer. Such Adjuster shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average Agreements and/or security shall be furnished by Owner and/or Charterer, and/or Owner and/or Consignee of cargo, if requested. Any cash deposit being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.

iv. **BOTH TO BLAME.** If the liability for any collision in which the Vessel is involved while performing this charter fails to be determined in accordance with the laws of the United States of America, the following provision shall apply:

“If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the cargo carried hereunder will indemnify the carrier against all loss, or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said cargo, paid or payable by the other or non carrying ship or her owners to the owners of the said cargo and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.”

“The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contact.”

v. **LIMITATION OF LIABILITY.** Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitation of, and exemptions from, liability accorded to the Owner or Chartered Owner of Vessels by any statute or rule of law for the time being in force.

vi. **WAR RISKS.** (a) If any port of loading or of discharge named in this Charter Party or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or (b) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions or the operation of international law (i) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (ii) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to reach any such port of loading or discharge - the Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established under the provision of the Charter Party (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charters within 5 days after they or their agents have received from the Owners a request for the nomination of a substitute port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of the Charter Party or not) and such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of the Charter Party, the Charter Party shall be read in respect of freight and all other conditions whatsoever as if

the voyage performed were that originally designated. In the event, however, that the Vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of the Charter Party, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and or discharging the cargo there at shall be paid by the Charterers or cargo owners. In the latter event the Owners shall have a lien on the cargo for all such extra expenses. (c) The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nations under whose flag the Vessel sails or any other government or local authority including any de facto government or local authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.

If by reason of or in compliance with any such direction or recommendation the Vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the Vessel may proceed to any safe port of discharge which the Master or Owners in his or their discretion may decide on and there discharge the cargo. Such discharge shall be deemed to be due fulfillment of the contract or contracts of affreightment and the Owners shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterers and/or Cargo Owners and the Owners shall have a lien on the cargo for freight and all such expenses.

vii. **DEVIATION CLAUSE.** The Vessel shall have liberty to call at any ports in any order, to sail with or without pilots, to tow or to be towed, to go to the assistance of vessels in distress, to deviate for the purpose of saving life or property or of landing any ill or injured person on board, and to call for fuel at any port of ports in or out of the regular course of the voyage.

12. LIEN

The Owner shall have a lien on the cargo for all freight, deadfreight, demurrage and costs, including attorney fees, of recovering the same, which lien shall continue after delivery of the cargo into the possession of the Charterer, or of the holders of any Bills of Lading covering the same or of any storageman. The Charterer shall have a lien on the Vessel for any freight paid in advance and not earned.

13. AGENTS

The Owner shall appoint Vessel's agents at all ports.

14. BREACH

Damages for breach of this Charter shall include all provable damages, and all costs of suit and attorney fees incurred in any action hereunder. Notwithstanding any other provisions of this Charter, neither Charterer nor Owner (or their vessel) nor any of the affiliated companies or shareholders of either of them shall be liable for any consequential damages arising out of or in any way connected to the performance of this Charter, including (without limitations) loss of profit, use or productions, provided, however, that for purposes of the clause, consequential damages shall not include any provisions in this Charter which provides for payments of money

15. LAW AND ARBITRATION

This Charter and all Bills of Lading issued hereunder shall be construed and the relations between the parties determined in accordance with the laws of_____.

All claims, disputes and other matters arising in connection with this charter or any bill of lading issued hereunder which, in the opinion of one of the Parties, the Parties have been unable to resolve by mutual agreement within ninety (90) days from the date the dispute first arose, shall exclusively and finally be settled by arbitration in _____, under the Rules of Arbitration of _____ as from time to time in effect or, in the absence of relevant provisions in the said Rules, with procedural laws of _____.

Such arbitration shall be conducted in the _____ language by three (3) arbitrators appointed in accordance with the said Rules. One arbitrator shall be appointed by each party and the parties shall agree to the selection of the third arbitrator within 60 days of the commencement of arbitration proceedings.

The award shall be final and binding on the Parties, and judgment upon the award may be entered in any court or other authority having jurisdiction or application may be made to said court or other authority for a judicial acceptance of the award and an order of enforcement, as the case may be. To the extent any Party is wholly or partly or directly or indirectly government owned or controlled, such Party agrees not to seek immunity from claim or suit or enforcement of the award on the ground of sovereign immunity.

16. SUBLETTING / ASSIGNING

Subject to Owner's approval, which shall not be unreasonably withheld, Charterer shall have the right to sublet the Vessel or assign this Charter Party to any individual or Company. However, Charterer shall always remain responsible for the fulfillment of this Charter Party in all its terms and conditions.

17. OIL POLLUTION

The Vessel shall be entered in a P&I club that is a member of the International Group of Protection and Indemnity Clubs, and the Vessel shall comply with any port, state

or local rules regarding pollution or proof of financial responsibility therefore which may be applicable to the ports specified in Part I.

IN WITNESS WHEREOF, the parties have caused this Charter, consisting of a Preamble, Parts I,II and Appendix A to be executed in duplicate as of the day and year first above written.

Witness the signature of:
(for Charterer)

By: _____

Witness the signature of:
(for Owner)

By: _____